

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE: DEALER MANAGEMENT SYSTEMS
ANTITRUST LITIGATION

)
) MDL No. 2817
) Case No. 1:18-CV-00864
)
)

This Document Relates To:

)
) Hon. Robert M. Dow, Jr.
)
)

The Dealership Class Action

DECLARATION OF JEFFREY SCOTT CHERRY

I, Jeffrey Scott Cherry, declare as follows:

1. I am the Vice President – General Counsel for Defendant The Reynolds & Reynolds Company (“Reynolds”). I have been counsel for Reynolds and/or its affiliates for the past 24 years. I have personal knowledge of the facts set forth herein, and they are true and correct.

2. I am required as part of my job responsibilities to be familiar with the documents described in this declaration. As General Counsel, I oversee the Reynolds Legal Department, which is responsible for maintaining the documents identified below.

3. **Exhibit 1** to Reynolds’s pending motions to dismiss (Doc. No. 255, Ex. 1) consists of authentic, true, and correct copies of printouts from the Federal Public Catalog of Copyrights, accessible at cocatalog.loc.gov, created on July 6, 2018 related to Reynolds’s ownership of four registered copyrights in different versions of the ERAccess and ERA Ignite computer programs.

4. **Exhibits 8-10 and corrected Exhibit 2** (Doc. No. 255, Ex. 8 (ECF pages 2-7), Ex. 9-10, and Doc. 270 (Corrected Ex. 2)) are authentic, true, and correct copies of Reynolds’s current licensing agreements, all of which have been unmodified since 2009. The Reynolds licensing agreements consist of four documents: an Authorization Letter, the Master Agreement, the Customer Guide, and the Defined Terms document, as follows:

a. **Exhibit 8** to Reynolds’s pending motions to dismiss (Doc No. 255, Ex. 8 (ECF pages 2-7)) contains authentic, true, and correct copies of the Authorization Letters executed by named plaintiffs who are or were Reynolds Dealers: John O’Neill Johnson Motor Co. (d/b/a John O’Neil Johnson Toyota); Teterboro Automall, Inc. (d/b/a Teterboro Chrysler Dodge Jeep Ram); Jim Marsh American Corporation (d/b/a Jim Marsh Mitsubishi Suzuki Kia Mahindra); Gregoris Motors, Inc., Hoover Automotive, LLC (d/b/a Hoover Dodge Jeep of Summerville); and Pitre, Inc. (d/b/a Pitre Buick GMC). These documents were created and kept in the ordinary course of Reynolds’s DMS licensing business. As noted on the face of the document, the standard form Authorization Letter Version 3 has been effective since 2009.

b. **Exhibit 8** (Doc. No. 255, Ex. 8 (ECF page 8)) also includes an authentic, true, and correct copy of Pitre, Inc.'s letter terminating its Reynolds DMS license effective March 4, 2015. This document was received and kept in the ordinary course of Reynolds's DMS licensing business.

c. **Corrected Exhibit 2** (Doc. No. 270) to Reynolds's motion to dismiss is an authentic, true, and correct copy of the current version (Version 3) of Reynolds's Master Agreement, which is incorporated by reference into the Authorization Letter identified above in paragraph 4.a. As noted on the face of the document, Corrected Exhibit 2 has been effective since 2009. There have been no changes to the standard form Master Agreement since Version 3 in 2009. It is, therefore, the controlling Master Agreement for each of the above-referenced named plaintiffs who are Reynolds Dealers. This document was created and kept in the ordinary course of Reynolds's DMS licensing business.

d. **Exhibit 9** to Reynolds's motion to dismiss (Doc. No. 255, Ex. 9) is an authentic, true, and correct copy of the current version of the Reynolds Customer Guide, which is incorporated by reference into the Master Agreement identified above in paragraph 4.c. As noted on the face of the document, this current version of the Reynolds Customer Guide has been effective since 2009. There have been no changes to the standard form Reynolds Customer Guide since 2009. It is, therefore, the controlling Reynolds Customer Guide for each of the above-referenced named plaintiffs who are Reynolds Dealers. This document was created and kept in the ordinary course of Reynolds's DMS licensing business.

e. **Exhibit 10** to Reynolds motion to dismiss (Doc. No. 255, Ex. 10) is an authentic, true and correct copy of the current version of the Defined Terms, which is incorporated by reference in the Authorization Letter identified above in paragraph 4.a. As noted on the face of the document, this standard form Defined Terms, Version 3 has been effective since 2009. There have been no changes to the standard form Defined Terms since the 2009 version in Exhibit 10. It is, therefore, the controlling Defined Terms document for each of the above-referenced name plaintiffs who are Reynolds Dealers. This document was created and kept in the ordinary course of Reynolds's DMS licensing business.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 20, 2018, at Houston, Texas.

By:



Jeffrey Scott Cherry

CERTIFICATE OF SERVICE

I, Aundrea K. Gulley, an attorney, hereby certify that on this 20th day of August, 2018, I caused a true and correct copy of the foregoing Declaration of Jeffrey Scott Cherry to be filed and served electronically via the court's CM/ECF system. Notice of this filing will be sent by email to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF system.

/s/ Aundrea K. Gulley

Aundrea K. Gulley

GIBBS & BRUNS LLP

1100 Louisiana Street, Suite 5300

Houston, TX 77002

(713) 650-8805

agulley@gibbsbruns.com